

FILED

SEP 23 2009

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

| | | |
|-----------------|---|--------------------|
| ROBERT RICKMAN, |) | CV 09-23-H-DWM-RKS |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | ORDER |
| |) | |
| DAN O'FALLON, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

Petitioner Rickman has filed a Petition for Writ of Habeas Corpus alleging that he received an unconstitutionally harsh sentence following his plea of guilty to a state charge of deliberate homicide.

United States Magistrate Judge Keith Strong conducted preliminary

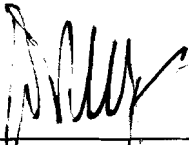
screening of the Petition as required by Rule 4 of the Rules Governing Section 2254 cases in the United States District Courts. Under Rule 4, the Petition must be summarily dismissed “[i]f it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the District Court.” If summary dismissal is not warranted, the judge must order the respondent to file an answer, motion, or other response or to take some other action as ordered by the judge. Judge Strong issued Findings and Recommendations in which he concludes that Petitioner is not entitled to relief in this Court because his life sentence, which is within the statutory maximum established for the offense of conviction, is not extreme or grossly disproportionate to the crime and does constitute a misapplication of Montana’s sentencing laws.

Because he concludes that Petitioner is not entitled to relief, Judge Strong recommends dismissal of the Petition and denial of a certificate of appealability. Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error

with Judge Strong's Findings and Recommendations (Doc. No. 7) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is DISMISSED and a certificate of appealability is DENIED.

DATED this 23rd day of September, 2009.



Donald W. Molloy, District Judge
United States District Court